

STATE OF VERMONT  
PUBLIC SERVICE BOARD

Dig Safe Notice No. 632

In Re All Seasons Excavating, Alleged Violation of         )  
July 24, 2009, as reported by Vermont Gas Systems, Inc.    )

Order entered: 4/8/2011

**ORDER RE: NOTICE OF PROBABLE VIOLATION**

**Background**

1. Pursuant to 30 V.S.A. § 7001 et. seq., and Vermont Public Service Board Rule 3.800, the Vermont Department of Public Service ("Department") issued a Notice of Probable Violation of Underground Utility Damage Prevention System ("NOPV") to All Seasons Excavating ("Respondent").
2. Incident Date: July 24, 2009
3. Incident Location: 50 Robinson Parkway, Burlington, VT
4. Name and Address of Company that Reported the Incident to the Department: Vermont Gas Systems, Inc., 85 Swift Street, South Burlington, VT 05403
5. Date Incident Reported to Effected Utility: July 24, 2009
6. Date NOPV issued by Department: September 25, 2009 (#1652)
7. Department's Statement of Evidence Supporting the Alleged Violation: "The Department of Public Service investigated this incident and determined the following details. On 7/9/09, All Seasons Excavating made a notice of excavation activities at this site for electrical conduit placement to Dig Safe System Inc. Vermont Gas Systems located and marked its underground facilities in the area of the proposed excavation. The paint marks were clearly visible at the time of excavation. All Seasons Excavating used an excavator to dig within the area designated by these marks. This machine struck and severed a gas service line causing a subsequent loss of service to 35 customers until repairs and relighting could be accomplished. All Seasons Excavating notified VGS of the damaged facility. The Department of Public Service issued 0 Notices of Probable Violation (NOPV's) to All Seasons Excavating during the 12 months preceding this incident."
8. Statute, Rule, Regulation or Order Allegedly violated: 30 V.S.A. § 7006b

9. The Department's Recommended Remedial Action(s) (Including Civil Penalties): Civil penalty in the amount of Three Hundred Dollars (\$300.00).
10. The NOPV, along with instructions concerning how to respond to the NOPV, was sent to All Seasons Excavating on September 25, 2009.<sup>1</sup> To date, All Seasons Excavating has not filed a response to the NOPV.

### **Conclusion and Order**

Public Service Board ("Board") Rule 3.807(C) provides:

Within 30 days of receipt of a Notice of Probable Violation, any person who is the subject of an enforcement proceeding pursuant to that Notice shall make a written response to the Department and to the Board, with a copy to the Company that reported the alleged violation.

Accordingly, we conclude that it is appropriate to make a binding disposition of this matter *by default*, pursuant to 3 V.S.A. Section 809(d).

WHEREFORE, IT IS HEREBY ORDERED, ADJUDGED AND DECREED by the Public Service Board of the State of Vermont that:

Within thirty days of the date of this Order, All Seasons Excavating shall pay a civil penalty in the amount of Three Hundred Dollars (\$300.00) by submitting to the Public Service Board a check in that amount made payable to the State of Vermont, and sent to the Public Service Board at 112 State Street, Montpelier, VT 05620-2701.

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1. Letter of Hans E. Mertens, dated September 25, 2009.

Dated at Montpelier, Vermont, this 8<sup>th</sup> day of April, 2011.

<u>s/James Volz</u>	)	
	)	PUBLIC SERVICE
	)	
<u>s/David C. Coen</u>	)	BOARD
	)	
	)	OF VERMONT
<u>s/John D. Burke</u>	)	

OFFICE OF THE CLERK

FILED: April 8, 2011

ATTEST: s/Susan M. Hudson  
Clerk of the Board

*NOTICE TO READERS: This decision is subject to revision of technical errors. Readers are requested to notify the Clerk of the Board (by e-mail, telephone, or in writing) of any apparent errors, in order that any necessary corrections may be made. (E-mail address: [psb.clerk@state.vt.us](mailto:psb.clerk@state.vt.us))*

*Appeal of this decision to the Supreme Court of Vermont must be filed with the Clerk of the Board within thirty days. Appeal will not stay the effect of this Order, absent further Order by this Board or appropriate action by the Supreme Court of Vermont. Motions for reconsideration or stay, if any, must be filed with the Clerk of the Board within ten days of the date of this decision and order.*